

**MEMORANDUM*****Engineering Division***

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**To:** Mike McNeely, City Engineer  
**From:** Darryl Wong, Utility Engineer  
**Subject:** Urban Runoff Enforcement Process  
**Date:** December 26, 2002

**Summary:** This memorandum describes a proposed urban runoff enforcement citation process. Adoption of the process would result in an enforcement approach consistent with the enforcement practice currently used by the neighborhood beautification code. The result would therefore be application of a more uniform enforcement process.

**Discussion:** Milpitas is required by the San Francisco Regional Water Quality Control Board (RWQCB) storm drain discharge permit to implement an urban runoff pollution prevention program (URPPP). A key URPPP permit requirement is the control of pollutant sources and discharges into City storm drains and creeks that may eventually discharge into San Francisco Bay. Pollutants that must be controlled include:

- floating, suspended or deposited macroscopic particulate matter, or foam;
- bottom deposits or aquatic growths;
- discharges that alter temperature, turbidity, or apparent color;
- visible floating, suspended, or deposited oil or other petroleum products; and
- substances which cause deleterious effects on aquatic biota, wildlife or waterfowl or that which renders any of these unfit for human consumption.

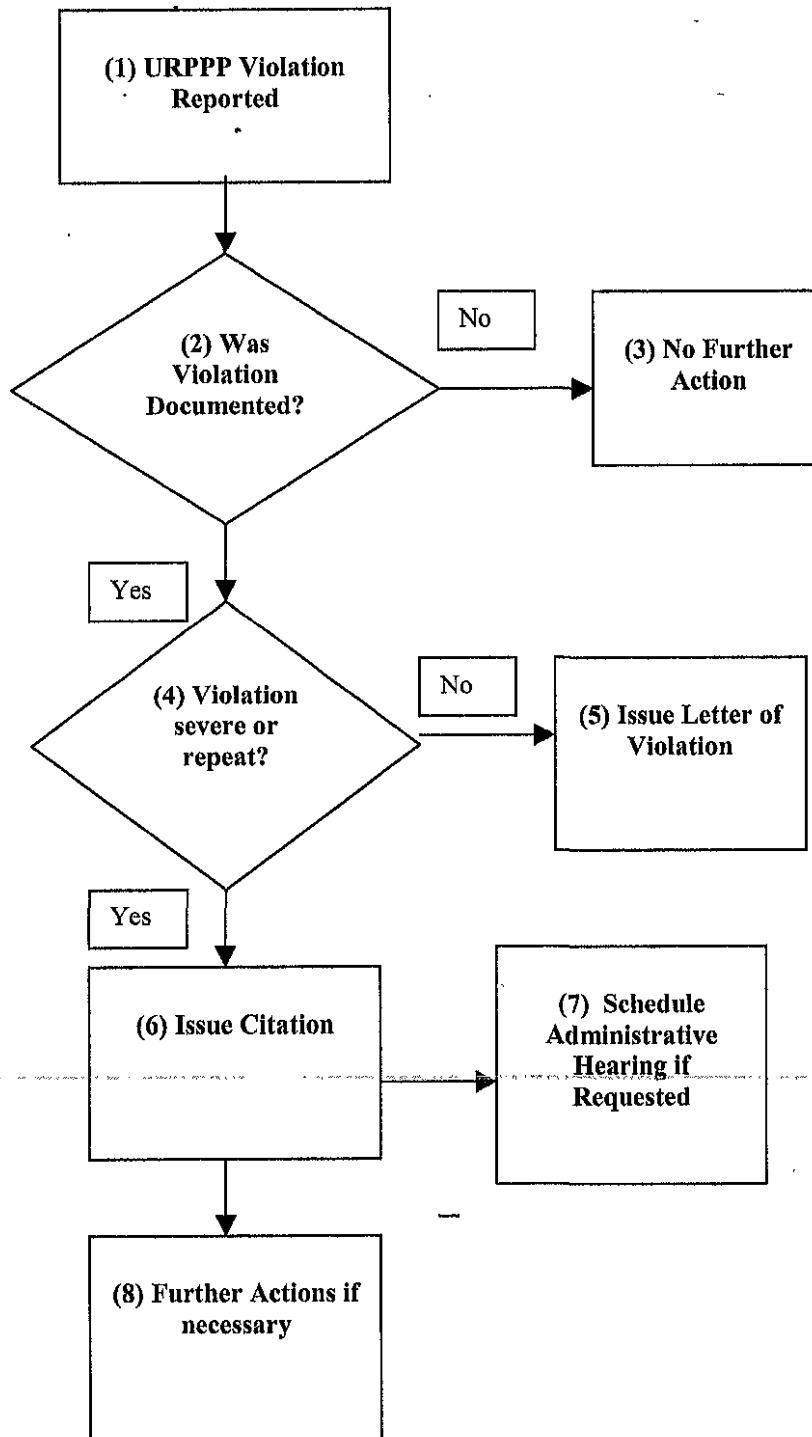
Under the existing City Code, URPPP discharge violations are enforced by issuing verbal and written violation notices, and by a subsequent administrative hearing, if necessary. Staff has found that violators may not be responsive to violation notices necessitating repeated contacts and meetings. In addition, issuance of formal written notices of violations can result in a lag period between the violation and violation notice. Using an administrative citation process that allows citation issuance, if necessary, at the time of the violation increases compliance effectiveness. Fines of \$100 for the first violation, \$200 for the second violation and \$500 for the third violation are recommended consistent with the neighborhood beautification program. The administrative citation process would not preclude application of written notices and administrative hearings, if needed, or any other available remedies such as criminal citations.

It is observed that the city may be fined by the RWQCB, under provisions of the Porter-Cologne Act, up to \$10,000 per incident per day if an urban runoff discharge violation occurs within the City. In addition, the Superior Court may impose civil liability up to \$25,000 per day for each day in which a violation occurs. Finally, violations of waste discharge requirements constitute criminal violations, punishable by up to one year in county jail and a fine of up to \$25,000 for each day in which the violation occurs.

A flow chart of the proposed citation process is shown in Figure 1. As seen, the citation process includes staff conducted administrative hearing if requested by the party receiving the citation.

**Recommendation:** Submit proposed urban runoff program enforcement process and necessary ordinance changes to Council for consideration and adoption.

cc: City manager  
Assistant City Manager  
Fire Marshal  
Senior Housing and Neighborhood Preservation Specialist



**Figure 1. Proposed URPPP Citation Enforcement Process Flowchart**

**Note:** See pages 4 and 5 for further details

### **Details for Figure 1 - Flow Chart Steps**

- (1) For hazardous waste or discharges that are occurring, call 911 for response [See also city SOP 8-6: "Response and Clean-up Guidelines for Hazardous and Non-hazardous Material Releases including Discharges of Pollutants into Storm drains and Water Sources (Urban Runoff Pollutant Prevention)"]. For hazardous, or fish & game violations, referral to District Attorney is an option.
- (2) Documentation, which can be used to verify pollutant discharge in subsequent enforcement activity, is needed. Photographs, written description of a visual observation, or other defensible information is desirable.
- (3) Advisory letter may be appropriate in severe or reported repeat violations that reoccur within one year.
- (4) A severe violation includes an immediate hazard to public health, public safety, environmental safety, or public endangerment. In addition to the letter of violation, City may immediately apply abatement procedures. If abatement is applied, prompt report of reasons and details of the abatement should be provided to the City Council through the City Manager:
  - Under City Code (Title V, Chapter 500, Section 3.08), severe violations (includes imminent danger to persons or property, or a public nuisance the City (acting by or through the City Manager or designee) may, forthwith and without notice, may abate said nuisance and recover cost of such abatement.
  - The City employee-processing the abatement of a nuisance under this Section shall file a written report with the City Manager, setting forth the circumstances which justified the abatement.

#### **Examples of severe violations include discharges of:**

- Grease and chemicals such as from kitchen filter and equipment cleaning
- Oil and other unacceptable fluids such as from automotive service activities
- Food waste such as from kitchen wash downs

#### **Examples of non-severe violations include discharges of:**

- Individual residential car wash discharges
- Irrigation water runoff

- (5) Letter of Violation mailed (certified return receipt requested) to the responsible party with a time frame for compliance. Any documentation generated (photos, inspection notices, etc) shall be included. The person or persons responsible for the discharge may be

directed to perform cleanup activities when deemed by the City that the violator has the capacity to perform such activities.

- (6) Citations may be up to but not exceeding \$100 for the first violation, \$200 for the second and \$500 for the third within one year per Chapter 16, Article XI. Section 12 of the Milpitas Urban Runoff and Watercourse Protection code. Fine shall be paid within 30 days of the citation. The citation shall contain the following:
- Date of Violation
  - Address or a description of the location of violation
  - Section of code violated and description of the violation
  - Amount of the fine
  - Description of the fine payment process including time and place of payment
  - Order prohibiting continuation or repeated occurrence of the violation
  - Description of administrative citation review process including time within which the citation may be contested and the place from which a request for hearing form may be obtained
  - Name and signature of the citing enforcement officer
- (7) Hearing to review the citation is conducted upon request of the party receiving the citation. The request for hearing form (available from the City Clerk) must be received within 15 days from the date of the administrative citation, together with an advance deposit of the fine or notice that a request for an advance deposit hardship waiver has been filed. The person requesting the hearing shall be notified of the time and place for the hearing at least 10 days prior to the date of the hearing. If the enforcement officer submits an additional written report concerning the administrative citation to the hearing officer for consideration at the hearing, then a copy of this report also shall be served on the person requesting the hearing at least 5 days prior to the hearing. The administrative citation fine paid shall be refunded, with interest, if it is determined, after the hearing, that the person charged was not responsible for the violation or that there was no violation as charged in the administrative citation.
- (8) Options for additional enforcement for reoccurring, repeat violations include criminal infraction, abatement order, and injunction (with Council approval).

**REGULAR**

**NUMBER**                **239.1**

**TITLE:**                **AN ORDINANCE OF THE CITY OF MILPITAS AMENDING CHAPTER  
16, ARTICLE XI OF THE MILPITAS MUNICIPAL CODE**

**HISTORY:**            This Ordinance was introduced (first reading) by the City Council at its meeting  
of \_\_\_\_\_, 2003, upon motion by Councilmember \_\_\_\_\_ and was  
adopted (second reading) by the City Council at its meeting of \_\_\_\_\_, 2003,  
upon motion by Councilmember \_\_\_\_\_. Said Ordinance was duly passed  
and ordered published in accordance with law by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

**ATTEST:**

**APPROVED:**

\_\_\_\_\_  
Gail Blalock, City Clerk

\_\_\_\_\_  
Jose S. Esteves, Mayor

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Steven T. Mattas, City Attorney

**ORDAINING CLAUSE:**

**THE CITY COUNCIL OF THE CITY OF MILPITAS DOES ORDAIN AS FOLLOWS:**

# Chapter 16

## **NONPOINT SOURCE POLLUTION PREVENTION URBAN RUNOFF AND WATERCOURSE PROTECTION**

Ordinance No. ~~239~~239.1

### Sections:

XI-16-1	Purpose
XI-16-2	Definitions
XI-16-3	Limitations on Point of Discharge
XI-16-4	Discharge into Storm Drains Prohibited
XI-16-5	Discharge Permitted Pursuant to NPDES Permit
XI-16-6	Public Nuisance
XI-16-7	Protection from Accidental Discharge
XI-16-8	Accidental Discharge - Notification of Discharge
XI-16-9	Watercourse Protection
XI-16-10	Outdoor Storage of Materials
XI-16-11	Violation
XI-16-12	<del>Civil Penalty For Violation — Payment of Funds to Account</del> <u>Administrative Citations</u>
XI-16-13	<del>Civil Penalties for Illicit Discharges</del> <u>Use of Proceeds of Fines and Penalties</u>
XI-16-14	<del>Notice of Violation</del> <u>Acts Potentially Resulting In a Violation of the Federal Clean Water Act and/or California Porter-Cologne Act</u>
XI-16-15	<del>Administrative Penalties</del> <u>Deleted</u>
XI-16-16	<del>Severability</del> <u>Deleted</u>

## **Chapter 16**

### **~~Nonpoint Source Pollution~~ Urban Runoff and Watercourse Protection**

#### **Ordinance No. ~~239~~239.1**

##### **XI-16-1      PURPOSE**

The U.S. Environmental Protection Agency has identified urban storm water runoff as the leading cause of water pollution in the United States. Furthermore, both federal and state agencies have identified storm water runoff from the City of Milpitas as a major source of pollution adversely impacting the beneficial uses of the South San Francisco Bay. As a result, the California Regional Water Quality Control Board, San Francisco Bay Region, has issued the City of Milpitas, among others, a National Pollutant Discharge Elimination System ("NPDES") permit requiring the City of Milpitas to establish legal authorities sufficient to protect its Storm Drain System from certain prohibited discharges. The City of Milpitas is also required to implement a Storm Water Management Program to assure that storm water runoff from the City of Milpitas does not cause or contribute to a violation of the water quality standards of South San Francisco Bay.

The purpose of this Chapter is therefore to provide minimum requirements designed to control the discharge of pollutants into the City of Milpitas' Storm Drain System and to assure that discharges from the City of Milpitas Storm Drain System comply with applicable provisions of the Federal Clean Water Act and the National Pollutant Discharge Elimination System Permit No. CA0029718. Enactment of this Chapter falls within the scope of the City of Milpitas police power to protect the health, safety, and welfare of its



residents. Nothing in this Chapter is intended to preclude more stringent federal or state regulation of any activity covered by this Chapter.

## **XI-16-2      DEFINITIONS**

The following words and phrases, when used in this Chapter, shall be as defined herein. Words and phrases used in this Chapter and not otherwise defined shall be as defined in the regulations promulgated by the U.S. Environmental Protection Agency to implement the requirements of the Federal Clean Water Act, or as defined by the State Water Resources Control Board to implement the California Water Code.

“Applicable Materials” means all materials used in industrial or commercial establishments that are stored outdoors, that may be exposed to Storm Water, and that have the reasonable potential to degrade the quality of runoff from the site. These include, but are not limited to, all materials containing cadmium, chromium, copper, lead, mercury, nickel, selenium, silver, and zinc, which are pollutants that have specifically been identified as known to contribute to impairment of applicable water quality standards.

“City” means and includes all the territory lying within the municipal boundaries of the City of Milpitas as existing as of the date of adoption of this ordinance, plus all territory which may be added thereto during the effective term of the ordinance codified herein.

“Discharge” means the discharge, addition, placement, deposit, release or dumping of any, applicable material, grease, pollutant or combination of pollutants to surface waters from any point source. This definition includes, but is not limited to, additions of pollutants into waters from: surface runoff and discharges through pipes, sewers, channels, or other conveyances owned by a State, or municipality.

“Grease” means, and includes, fats, oils, waxes, or other related constituents. Grease may be of mineral origin, including kerosene's, lubricating oil, and road oil. Grease may also be of vegetable or animal origin, including butter, lard, margarine, vegetable fats and oils, fats in meats, cereals, seeds, nuts,

and certain fruits. Grease is generally present as, but need not be, a floatable solid, a liquid, a colloid, an emulsion, or in a solution.

"Grease Generating Activity" means any commercial or industrial activity that uses or produces Grease on an ongoing basis.

"Grease Removal Device" means an interceptor or other mechanical device designed, constructed, and intended to remove, hold, or otherwise prevent the passage of Grease to the sanitary sewer or City's Storm Drain System.

"Industrial waste" means the wastes of producing, manufacturing, and processing operations of every kind and nature.

"Interceptor" means a receptacle or trap designed and constructed to intercept, separate and prevent the passage of prohibited substances into the sanitary sewer or City's Storm Drain System.

"Major Development or Redevelopment Project" means construction activities that result in the disturbance of five or more acres of total land area.

~~"Nonpoint Source Pollution" represents a process whereby pollutants, debris, and chemicals which accumulate on streets and pavement are washed off by rainfall and carried away by stormwater runoff into South San Francisco Bay. Unlike pollutants that come from a "point source" such as a sewer pipe or industrial outfall, nonpoint source pollutants are washed from streets, neighborhoods, construction sites, parking lots, and other exposed surfaces throughout the region.~~

"NPDES Permit" means a valid National Pollutant Discharge Elimination System permit issued by the California Regional Water Quality Control Board, San Francisco Bay Region, in accordance with regulations promulgated by the U.S. Environmental Protection Agency to implement the requirements of the federal Clean Water Act.

"Person" includes any person, firm, association, organization, partnership, business trust, joint venture, corporation or company, and includes the United States, the State of California, the County of Santa Clara, special purpose districts, and any officer or agency thereof.

"Pollutants" mean and include all sewage, sewage sludge, garbage, biological materials, radioactive materials, chemical, industrial, and agricultural waste discharged into water.

"Storm Drain" is any manmade structure that conveys storm water runoff and includes but is not limited to underground pipe or open channel.

"Storm Drain System" means and includes, but shall not be limited to, those facilities within the municipality by which storm water may be conveyed to waters of the United States, including any roads with drainage systems, city streets, catch basins, curbs, gutters, ditches, man-made channels or storm drains, which are not part of a Publicly Owned Treatment Works (POTW).

"Storm Water" means all rainfall runoff, surface runoff, and drainage.

"Watercourses" means and includes all public or privately owned natural waterways and definite channels and depressions in the earth that carry water, even though such waterways may only carry water during rains and storms and may not carry storm water at and during all times and seasons. Watercourses include, but are not limited to, facilities owned and operated by the Santa Clara Valley Water District and the City of Milpitas.

"Waste" is any discarded material that is either manmade or of natural origin.

#### **XI-16-3      LIMITATIONS ON POINT OF DISCHARGE**

No person shall discharge any substance directly into a manhole or other opening in a City owned or maintained storm drain or watercourse other than through a City approved storm drain connection.

#### **XI-16-4 DISCHARGE INTO STORM DRAINS PROHIBITED**

It shall be unlawful to discharge, or cause, allow, or permit to be discharged into any storm drain or watercourse all wastes or pollutants, including but not restricted to sewage, industrial wastes, petroleum products, coal tar or any refuse substance arising from the manufacture of gas from coal or petroleum, chemicals, polluted cooling water, detergents, solvents, paints, contaminated or chlorinated swimming pool water, pesticides, herbicides and fertilizers.

Allowable discharges shall not cause any impairment in the beneficial uses or quality of water of the state as defined in the California Water Code or any special requirements of the Regional Water Quality Control Board, San Francisco Bay Region or to injure or interfere with the operation of any watercourses within the State. The City may, from time to time, by resolution of the City Council adopt supplementary rules and regulations on discharge into any City owned or maintained storm drain or watercourse which shall have the same force and effect as if set forth herein and for which the remedies herein for violation shall be applicable.

#### **XI-16-5 DISCHARGE PERMITTED PURSUANT TO NPDES PERMIT**

The provisions of this Chapter shall not prohibit any discharge in compliance with a valid NPDES permit issued to the discharger.

#### **XI-16-6 PUBLIC NUISANCE**

The discharge of weeds, rubbish, refuse or dirt, unscreened garbage, fruit, vegetable, applicable materials, grease, pollutants, animal or industrial wastes into any storm drain or watercourse, in violation of any provision of this Chapter, is hereby declared to be a public nuisance and shall be handled in the same manner as provided for in Chapter ~~20~~ 500 of Title ~~IV~~ V of this Code.

**XI-16-7 PROTECTION FROM ACCIDENTAL DISCHARGE**

Each person shall provide protection from accidental discharge of prohibited materials or other wastes regulated by this Chapter into any storm drain or watercourse. Facilities to prevent accidental discharge or prohibited materials shall be provided and maintained at the person's expense.

**XI-16-8 ACCIDENTAL DISCHARGE-NOTIFICATION OF DISCHARGE**

(a) All persons shall notify the City of Milpitas by telephone immediately by dialing (911) upon accidentally discharging any material other than an acceptable discharge into a storm drain or watercourse to enable countermeasures to be taken by the City to minimize damage to storm drains and the receiving waters. In conformance with ~~Title I, Chapter 20500~~, of Title V Section 1 of this Ceode, the City may abate any nuisance that obstructs the public right-of-way or poses an immediate danger to persons, property or wildlife. The City, at it's sole option, may direct the person or persons responsible for the discharge to perform cleanup activities when it is deemed by the City that the person or persons have the capability to perform such activities.

(b) This notification shall be followed, within ten (10) days of the date of occurrence, by a detailed written statement to the City Engineer describing the causes of the accidental discharge and the measures being taken to prevent future occurrences. Such notification will not relieve persons of liability for violations of this Chapter or for any fines imposed on the City on account thereof under Section 13350 of the California Water Code, or for violation of Section 5650 of the California Fish and Wildlife Code, or any other applicable provisions of State or Federal laws.

- A. Watercourse Protection Requirements. Every person owning, operating, or leasing property through which a Watercourse passes, shall keep and maintain that part of the Watercourse within the property reasonably free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the Watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a Watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the Watercourse. The owner or lessee shall not remove healthy bank vegetation beyond that actually necessary for maintenance, nor remove said vegetation in such a manner as to increase the vulnerability of the Watercourse to erosion.
- B. Acts Requiring Permit. No person shall commit or cause to be committed any of the following acts, unless an encroachment permit or an approved plan has been issued by the City Engineer or his/her designee to the applicant.
- (1) Construct, alter, enlarge, connect to, discharge to, change, or remove any structure in a City owned or maintained watercourse or storm drain.
  - (2) Modify the natural flow of water in a City owned or maintained watercourse;
  - (3) Deposit in, plant in, or remove any material from, a City owned or maintained watercourse; including its banks, except as required for necessary maintenance;
- C. Suspension or Revocation The City Engineer may suspend or revoke a permit issued under this title whenever the permit is issued in error or

on the basis of incorrect information supplied, or in violation of any ordinance, the terms of the permit, regulations, or any of the provisions of this Title.

## XI-16-10 OUTDOOR STORAGE OF MATERIALS

- A. Proper Outdoor Storage of Materials Required. All applicable materials, grease or potential pollutants stored outdoors at a commercial or industrial establishment shall be managed in a manner that minimizes the Discharge of Pollutants to Storm Water and as is required to meet water quality standards. Establishments covered by the General NPDES Permit for Storm Water Discharges "Associated With Industrial Activities" that has been promulgated for Santa Clara County by the California Regional Water Quality Control Board, San Francisco Bay Region, shall address this requirement in applicable provisions of their Storm Water Pollution Prevention Plan (SWPPP).
- B. Protection Against Accidental Discharge. Each person shall provide protection against the accidental discharge of prohibited materials to the City's Storm Drain System or Watercourse. Protection may include but is not limited to secondary containment systems or equivalent measures. Any system that includes the permanent modification of a building, site, or the addition of a building or structure, shall be submitted to the City's Building Inspection Division for approval in accordance with applicable Building Codes. All facilities to prevent the accidental discharge of prohibited materials to the City's Storm Drain System or Watercourse shall be provided and maintained at the owner or operator's expense.
- C. Report of Accidental Discharge to the Storm Drain. The owner or operator of an establishment shall notify the City as described in Title XI, Chapter 16, section 8, of this code. The owner or operator of such establishment shall also retain an on-site written record of all accidental discharges of prohibited materials (whether or not such discharge actually entered the City's Storm Drain System or Watercourse) and the actions taken to prevent their reoccurrence.

Such records shall be retained for at least five years. A notice shall be permanently posted in a conspicuous place on the premises of each commercial or industrial establishment advising employees of the agency to call in case of such an accidental discharge.

XI-16-11 VIOLATION

Any person who violates any provision of this Chapter shall be guilty of a misdemeanor, which shall be punishable by a fine not exceeding One Thousand Dollars (\$1000) or imprisonment in the County jail of Santa Clara County, California, for a term not exceeding six months, or both such fine and imprisonment.

XI-16-12 ~~CIVIL PENALTY FOR VIOLATION -- PAYMENT OF FUNDS TO ACCOUNT~~Administrative Citations

When he or she determines that one or more violations of this Chapter have occurred, the City Engineer and his/her designee may issue administrative citations pursuant to the procedures set forth in sections V-500-8.00 through V-500-8.06. The schedule of fines for administrative citations issued for violations of this Chapter is as follows:

1. Not to exceed \$100 for the first violation
2. Not to exceed \$200 for the second violation within one year; and
3. Not to exceed \$500 for the third violation within one year
4. Not to exceed \$25 delinquency penalty for penalties received after the due date (after 30 days from the date of the administrative citation)

~~Any person who violates any provision of this Chapter or any provision of any permit issued pursuant to this Chapter shall be civilly liable to the City in a sum not to exceed the amounts provided for in Government Code §§54740 and/or 54740.5. The City may petition the Superior Court pursuant to Government Code §54740 to impose, assess and recover such sums. The civil penalty provided in this Section is cumulative and~~



~~not exclusive, and shall be in addition to all other remedies available to the City under State and Federal law and local ordinances. Funds collected pursuant to this Section shall be paid to the City's Nonpoint Violation Account.~~

XI-16-13 ~~CIVIL PENALTIES FOR ILLICIT DISCHARGES~~Use of Proceeds of Fines and Penalties

~~Funds collected pursuant to this Chapter shall be paid to the City's urban runoff violation account and may be used for any purpose related to the City's implementation of its NPDES permit. Any person who discharges pollutants, in violation of this Chapter, by the use of illicit connections shall be civilly liable to the City in a sum not to exceed Twenty Five Thousand Dollars (\$25,000.00) per day per violation for each day in which such violation occurs. The City may petition the Superior Court pursuant to Government Code 54740 and/or 54740.5 as amended from time to time, to impose, assess and recover such sums. As described in the Government Code 54740.5, the City Engineer shall act as the hearing officer and may recommend to City Council the assessment of Civil Penalties by City Council for any violations of this Chapter. The Civil penalty provided in this section is cumulative and not exclusive, and shall be in addition to all other remedies available to the City under local, State and Federal law. Funds collected pursuant to this Section shall be paid to the City's Nonpoint Violation Account.~~

XI-16-14 ~~NOTICE OF VIOLATION~~Acts Potentially Resulting in a Violation of the Federal Clean Water Act and/or California Porter-Cologne Act

~~Any person who violates any provision of the Chapter of any provision of any requirement issued pursuant to this Chapter, may also be in violation of the Clean Water Act and/or the Porter-Cologne Act and may be subject to the sanctions of those acts including civil and criminal penalties. Any enforcement action authorized under this article shall also include written notice to the violator of such potential liability. Unless the City Engineer finds that the severity of the violation warrants immediate action under Title~~

~~±, Chapter 20, Section 4.13 of this Code, he/she shall issue a notice of violation which:~~

~~(1) Enumerates the violations found; and~~

~~(2) Orders compliance by a certain date.~~

~~Failure to comply may result in the City pursuing any or all remedies available to it, including but not limited to the assessment of Civil Penalties, administrative penalties pursuant to section XI-16-15, and/or a hearing before the City Engineer or his/her designee for permit revocation or suspension.~~

#### ~~XI-16-15 ADMINISTRATIVE PENALTIES~~

~~Whenever the City Manager or his/her designee finds that any person has violated any notice of violation requiring compliance with any provision of this Chapter, or has violated any provision of this Chapter, he/she may recommend to City Council the assessment of an administrative penalty by City Council in a sum not to exceed the amounts provided in Government Code §54740.5. The remedy provided in this Section is cumulative and not exclusive, and shall be in addition to all other remedies available to the City under State and Federal law and local ordinances. Funds collected pursuant to this Section shall be paid to Nonpoint Violation Account.~~

#### ~~XI-16-16 SEVERABILITY~~

~~If any section, subsection, sentence, clause, or phrase of this Chapter is for any reason held to be unconstitutional or otherwise void or invalid, by any court of competent jurisdiction the validity of the remaining portion of this Chapter shall not be affected thereby.~~